IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.1906 OF 1989

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

---

1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

AMBALAL JENAJI CHAUHAN
VERSUS
INSPECTING OFFICER (COURT FEES) & ANR.

Appearance:
MR JP PARMAR for Petitioner
MR DA BAMBHANIA for Respondent

Coram: S.K. Keshote,J
Date of decision:3.10.97

C.A.V. JUDGMENT

#. The petitioner who was given only urgent temporary

appointment on fixed term in the office of Inspecting Officer (Court Fees) of the High Court and Small Causes Court, and ex-officio Chief Inspector (Court Fees), Ahmedabad, filed this Special Civil Application and prayer has been made for direction to the respondents to (i) regularize the services of the petitioner on the post of Peon and to give him all other benefits following therefrom and (ii) direct the respondents not to terminate the services of the petitioner and to allow him to perform his duties on the post of Peon without any disturbance.

#. From the facts which have come on record, it is no more in issue that the term of temporary appointment of the petitioner was last extended upto February 1989. This Special Civil Application has been filed by the petitioner on 13th March 1989. The day on which this Special Civil Application has been filed by the petitioner, he was no more in service. In view of this fact, the second prayer made by petitioner in this Special Civil Application is not tenable. The services of the petitioner were terminated much earlier, may be by afflux of time, to the day on which this Special Civil Application has been filed. The first prayer is also equally of no substance. Unless the petitioner is successfully able to challenge the termination of his services, the question of giving direction to the respondent to regularize his service does not arise.

#. However, the Special Civil Application has been amended and further Civil Application No.8579 of 1991 has been filed by the petitioner for second amendment of the Special Civil Application. I considered the contents of the Civil Application and permitted the petitioner to make reference to the same during the course of arguments and in view of this fact, no order on the Civil Application is required to be made. By subsequent amendment as well as Civil Application, the petitioner sought to raise the further ground of challenge to the termination of his services. Though without amendment of the prayer in the Special Civil Application, this ground may not be available to the petitioner, but still taking into consideration the fact that the matter pertains to termination of services of a low paid employee, I overrule this technical bar and permitted the petitioner's counsel to raise all these submissions during the course of arguments.

#. The learned counsel for the petitioner contended that the appointment of the petitioner was made after names of the candidates were sponsored by the Social Welfare

Department. So it was a regular appointment and the post was available in the department on the day on which his services were terminated. It has next been contended that the services of the petitioner have been terminated, now as it reflects from the reply and further reply to the Special Civil Application filed by respondent by way of penalty. Carrying further this contention, the learned counsel for the petitioner submitted that that course could have been open only after giving notice and opportunity of hearing to the petitioner which has not been done in the present case. Lastly, the learned counsel for the petitioner contended that as the petitioner irrespective of the fact that he was given the fixed term appointment from time to time by way of extension of first appointment, worked for more than four years, he acquired right of regularization of his services.

#. On the other hand, Shri D.A.Bambhania, learned counsel for the respondents contended that it was purely an adhoc appointment and in fact it was an arrangement pending regular selection to be made on the post of Peon. The office of respondent itself was temporary and the post of Peon was also temporary. Sanction was given from time to time for extension on the post by the Government. In the departments, normally adhoc and temporary appointments are made from the candidates requisitioned from the office of the Social Welfare Department and till the regular selection is made it continues. But nevertheless it is only adhoc and temporary appointment. Carrying further this contention, the learned counsel for respondents, Shri D.A.Bambhania contended that the petitioner was given fixed term appointment with specific stipulations therein that his services are purely temporary and liable to be terminated at any time without notice. So all the time, the petitioner was given a fixed term appointment and his last appointment was give for the period ending 28th February 1989. It is not the case, what learned counsel for the respondents contended, of termination of services, as urged by learned counsel for the petitioner. It is a case where further fixed term appointment was not given to the petitioner after his earlier fixed term appointment came to an end by afflux of time. The petitioner was not given the further appointment on the fixed term basis on the ground that his work was not found satisfactory. It cannot be said to be a termination by way of penalty. No stigma has been casted and as such no opportunity of hearing was required to be given. Lastly, the learned counsel for the respondents contended that the recruitment to the post of class IV in the office of respondents are to be

regulated under the provisions of the Peons, (Non Secretariat) Recruitment Rules 1982 (hereinafter referred to as `Rules 1982'). These rules are framed under Article 309 of the Constitution of India and in the year 1981 after calling the names from the Employment Exchange, and making selection therefrom one Shri P.M. Parmar, a SC candidate has been given the appointment and he is continuously working till date. This appointment was given on 16th July 1991 and by now he has completed more than six years in service.

#. The learned counsel for the petitioner placed reliance on the decision of Hon'ble Supreme Court in the case of S.Givindraju v. K.S.R.T.C., reported in AIR 1986 SC 1680 and of this Court in the case of -------- reported in 1985 GLR 1530 (No such case is there in the report). He further placed reliance on the decision of this Court in the case of Sri Ganganagar Urban Cooperative Bank Ltd. v. Prescribed Authority & Ors., reported in JT 1997(5) SC 595.

#. The learned counsel for the respondents, on the other hand, in support of his contentions, placed reliance on the following decisions.

(i) Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. v. Devendra Kumar Jain & Ors. -- JT 1995(1) SC 198

(ii) Bhanmati Tapubhai Muliya v. State of Gujarat -- 1995(2) GLH 228

#. I have given my thoughtful consideration to the submissions made by learned counsel for the parties.

#. From the orders dated 12.7.84, 30.11.84, 29.12.84, 1.11.85, 1.1.86, and 24.2.89, it is clearly borne out that the petitioner was given appointment purely on adhoc and temporary basis subject to the condition that his appointment in the office is purely temporary and his services as a Peon in the office is liable to be terminated without notice at any time and without assigning any reason. These appointments have been accepted by the petitioner subject to the aforesaid conditions and as such even if his services would have been terminated earlier to the period for which he was given appointment, the respondent was not required to give notice or to assign any reason for doing so. The case of the petitioner stands on much lower pedestal. In this case, the appointment was given to the petitioner for a fixed term which has come to an end by afflux of

time on 28th February 1989. The Division bench of this Court, in the case of Bhanmati Tapubhai Muliya v. State of Gujarat (supra) speaking for the Court Mr.Justice B.N.Kirpal, C.J. (as he then was), held that in the adhoc appointments made for a fixed term, on expiry of term thereof, the employee has no right to continue on the post. Such appointment automatically comes to an end by afflux of time. In such cases, the order of termination is even not necessary. The Division Bench has made reference in this decision to two decisions of the Apex Court, namely (i) State of Gujarat & Anr. v. B.J. Kampavat & Ors., reported in 1992(3) SC 226 and (ii) Dr.Arundhati Ajit Pargaonkar v. State of Maharashtra, reported in JT 1994(5) SC 378. In the first case, the Hon'ble Supreme Court held that the person appointed on specific condition that their services will be purely temporary and liable to be terminated forthwith without any notice cannot seek any protection. In another case, the appellant therein was appointed after selection on 16th September 1978 and the letter of appointment stated that the appointment was "on purely temporary basis pending further orders as lecturer in Dentistry at the B.J.Medical College, Pune, from the date of taking over the charge". The appellant therein worked for about nine years and then her services were terminated. It was observed by the Hon'ble Supreme Court that the eligibility and continuous working for howsoever long period should not be permitted to be overreach the law. The appellant therein was held not entitled to claim regularization even though she had worked without a break for nine years.

##. Much emphasis has been put by the learned counsel for the petitioner on the ground that the petitioner's appointment was regular. It is true that the name of the petitioner was sponsored by Social Welfare Department, but that course was only adopted for giving of the fixed term adhoc and temporary appointments. Regular appointments have to be made in accordance with rules referred earlier and I find sufficient justification in the contention of learned counsel for the respondents that it could have been done only by calling the names from the Employment Exchange as well as from the Social Welfare Department etc. Even the temporary and adhoc appointments, may be for fixed term, have to be made by giving the opportunity to all eligible candidates. The provisions of Articles 14 and 16 of the Constitution are applicable to the appointments made on a temporary basis. But merely because the names were called from the Social Welfare Department for making appointment on the said post and alongwith other candidates, the petitioner's

name was sponsored by the Social Welfare Department and thereafter the petitioner was selected on the said post, will not make the appointment a regular appointment under the rules aforesaid. Still I have my own reservation whether strictly it can be said to be an appointment in consonance with the provisions of Articles 14 and 16 of the Constitution of India in view of the latest Supreme Court decision where their Lordships have held that in addition to calling the names from Employment Exchange, the applications should have been called from open market also. Further, taking into consideration the matter from another angles, the petitioner still has no case whatsoever. It was not a case of regular appointment. It was a case of temporary appointment given for a fixed term and has held by this Court in the case of Bhanmati Tapubhai Muliya v. State of Gujarat (supra), the said appointment has come to an end by afflux of time and even no order of termination or notice is required to be given. Even if it is taken to be a case of termination of temporary appointment, then too the contention of learned counsel for the petitioner that the notice should have been given, is without any substance. In the case of Madhya Pradesh Hasta Shilpa Vikas Nigam v. Devendra Kumar Jain & Ors. (supra) their Lordships of the Hon'ble Supreme Court held that while terminating the services of a temporary employee, notice is not required. The appointment of the petitioner were dehors the Rules 1982. Where recruitment rules have been framed under Article 309 of the Constitution, the appointments have to be made according to these Rules and not otherwise. It is not the case of petitioner that the his appointment has been made under the Rules 1982. So it was the case of only a temporary appointment.

##. At this stage, I consider it to be appropriate to make reference to the decision of the Hon'ble Supreme Court in the case of Sri Ganganagar Urban Cooperative Bank Ltd. v. Prescribed Authority & Ors. (supra) on which strong reliance has been placed by petitioner's counsel. This decision has been cited by the learned counsel for the petitioner in support of his contention that before terminating the services of the petitioner, notice has to be given. However, this case is hardly of any help to the petitioner. Before the Hon'ble Supreme Court, the matter was with reference to the provisions of Section 28A of Rajasthan Shops and Commercial Establishment Act, 1958, read with Rule 20(d) of Rajasthan Cooperative Societies Rule.

##. The next question which falls for consideration of this Court is whether any direction can be given to the

respondents to regularize the services of the petitioner? The petitioner's appointment was purely adhoc and temporary and above that, only for a fixed term. This appointment was dehors of Rules 1982. Their Lordships of the Hon'ble Supreme Court in the case of Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. v. Devendra Kumar Jain & Ors. (supra) held that temporary appointment does not culminate in permanent appointment merely because the employee concerned has worked continuously for a long period. This status of permanency can only be there under some statute, or where by specific order such status has been conferred. The learned counsel for the petitioner failed to point out any provision from the Rules 1982 which confers such a right upon the petitioner and secondly he has not produced any order under which the petitioner has been made permanent. Whatever orders of appointment which have been produced by the petitioner, as stated earlier, only give out that the appointment of the petitioner was only adhoc, temporary and for a fixed term and further subject to condition of termination of service without any notice or reason. If any direction for regularization of services of the petitioner is given then this Court will perpetuate an illegality. It will make an appointment which is dehors of the Rules 1982 to be a regular one and as such, this direction cannot be given by this Court.

##. Lastly, it is true that the appointments which has been made of other person was subject to outcome of this Special Civil Application, but yet there is another aspect which needs consideration. Whether such condition can be made application and by giving effect to such an order services of that person can be terminated without giving notice and opportunity of hearing to him, is a larger issue which calls for consideration. The petitioner has not impleaded that person as a party to this Special Civil Application. If the petitioner's prayer is accepted and direction is given for regularization of his services or for his continuation in service, then the consequent result thereof would be of ousting the person from services who has been subsequently given employment after termination of the petitioner's service, who is also not before this Court. The order of this Court cannot be read and should not be read in a manner which in case given effect to may amount to violate principles of natural justice as well as otherwise cause prejudice to other person who is not before it. In such cases also, if during the pendency of the Special Civil Application appointments are being made then it is obligatory on the part of the petitioner to implead those persons as party and only in their presence

relief of the nature as prayed for in this Special Civil Application can be granted. This course is more obligatory in the cases where there is only on post or where no other posts are available. In the present case, there is no dispute that there is only one post of Peon in the office of respondent. If we examine the matter from the point of view of equity, then too, the petitioner has no case. There are two claimants of the post, namely the petitioner and the person who has been given appointment in accordance with Rules 1982 in the year 1991. If we go by length of services, the petitioner worked for about four years and few months whereas that person by now has already completed services of more than six years. The petitioner's services were not extended as his work was not satisfactory and in this case otherwise also he could have been replaced by another temporary appointee. But for a considerable period the post remained vacant and in the yea 1991 regular appointment thereon has been made. So in case the relief of the nature as prayed for by the petitioner is allowed then this Court will replace a purely adhoc temporary appointee who has been given fixed term appointment and subject to condition of termination of service without notice and assigning reasons by terminating the services of a person who is working for more than six years after he has been appointed in accordance with recruitment rules.

##. Taking into consideration the totality of the facts of this case, this Special Civil Application is wholly misconceived and without any substance and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court, stands vacated. No order as to costs.

.....

(s)